

Appl. No. : Not Yet Assigned
Filed : Herewith

REMARKS

Applicants have amended the specification to include a paragraph indicating the applications to which the present application claims priority. In addition, Applicants have cancelled the original claims and have submitted new claims drawn to a subject matter previously pursued in the parent application. Claims drawn to the subject matter of the present claims were cancelled in the parent application in order to advance that case towards allowance. Applicants pursue that subject matter in the present application.

Applicants respectfully submit that the present claims satisfy the written description requirements of 35 U.S.C. § 112. The present Claims 22-26 are analogous to Example 14 on pages 53-55 of the Written Description Training Materials, which analyzes a claim directed to a protein and variants thereof having 95% sequence identity, all of which share the same biological function, for its compliance with the written description requirement of 35 U.S.C. § 112, first paragraph. The Written Description Training Materials conclude that such a claim satisfies the written description requirement of 35 U.S.C. § 112, first paragraph, when (1) a single protein sequence is actually reduced to practice, (2) procedures for making variants of that “reduced to practice” protein sequence are conventional in the art, and (3) an assay is described which allows identification of other proteins having the same biological activity. The reasoning provided by the USPTO in the Written Description Training Materials is that:

[t]here is actual reduction to practice of the single disclosed species. The specification indicates that the genus of proteins that must be variants of SEQ ID NO:...does not have substantial variation since all of the variants must possess the specified [biological function] and must have at least 95% identity to the reference sequence, SEQ ID NO:...The single species disclosed *is representative of the genus* because all members have at least 95% structural identity with the reference compound and because of the presence of an assay which applicant provided for identifying all of the at least 95% identical variants of SEQ ID NO:...which are capable of the specified [biological function]. One of skill in the art would conclude that applicant was in possession of the necessary common attributes possessed by members of the genus....[As such], the disclosure meets the requirements of 35 U.S.C. § 112, first paragraph, as providing adequate written description for the claimed invention." (emphasis added).

Accordingly, Applicants submit that Claims 22-26 satisfy the written description requirements. Applicants further submit that the claims as written are patentable and request a notice to that effect. No fee is believed due in connection with this preliminary amendment. If

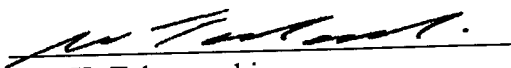
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this is incorrect, the Commissioner is hereby authorized to charge any necessary fees to Deposit Account No. 07-0630. Applicants invite the Examiner to call the undersigned if any issues may be resolved through a telephonic conversation.

Respectfully submitted,

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